



MARICOPA COUNTY JUSTICE COURTS BEST PRACTICES

SUBJECT: IMPLEMENTATION OF EXECUTIVE ORDER 2020-14 (AMENDED)

EFFECTIVE: 04/29/2020

1. RATIONALE: Governor Ducey issued Executive Order 2020-14 entitled "Postponement of Eviction Actions" on March 24, 2020.
2. PURPOSE: The purpose of any "best practice" is to foster excellence regarding case processing, form development and control, and other operating procedure throughout the Maricopa County Justice Court system ("MCJC"). Implementation of a "best practice" is strongly recommended to promote consistency and efficiency throughout the MCJC but is voluntary by any individual Justice of the Peace ("JP") Court.
3. ISSUE: The Executive Order directs constables and law enforcement officers to temporarily delay writs of restitution in certain circumstances and for certain individuals. The Executive Order does include necessary activity on the part of the courts, but as it did not go through the legislative or Supreme Court's rule-making process, it requires courts to substantively resolve certain issues. This Best Practice is offered to provide judicial officers points to consider in fulfilling their obligations under the Executive Order.
4. LEGAL AUTHORITY: Executive Order 2020-14 entitled "Postponement of Eviction Actions" on March 24, 2020.
5. BEST PRACTICES:

General Guidance

The Executive Order does not make substantive changes to Arizona eviction law. It directs constables and law enforcement officers (collectively

“LEOs”) to temporarily delay writs of restitution in certain circumstances and for certain individuals and then allows for an aggrieved party to file a motion to enforce a writ if the party does not agree with a LEO’s decision not to enforce the writ.

The initial eviction proceeding and writ issuance process is unchanged as the Executive Order process is not triggered until after the writ is issued. The Executive Order highlights that a landlord shall not interpret a health and safety provision of a contract to include COVID-19 as a reason for termination of a lease.

Although the Executive Order does not impact whether an eviction judgment will be issued, due to apparent confusion concerning the Executive Order, at the time of the initial appearance, a justice of the peace should provide a general explanation of the Executive Order and how a tenant may seek relief under it prior to the enforcement of the writ.

The Executive Order relief process is triggered when the tenant provides the landlord with written documentation that they are seeking protection under the Executive Order by requesting a temporary delay of enforcement of the writ after it has been issued. The Committee has determined that this “written” documentation requirement may be satisfied by any form of notification, including emails and text messages. The Committee also recognizes that property managers are agents of the owners/landlords and therefore deem written documentation to the property manager as sufficient.

If the LEO has arrived to enforce a writ and the tenant believes they are qualified for relief but have not yet provided documentation to the landlord, the Committee has been informed that many LEOs will allow the tenant five business days to provide documentation to the landlord before enforcing the writ. The Committee recognizes this implements the intent of Executive Order. The Committee also notes that Maricopa County Constables have produced their own Best Practice, and it allows for an additional five days.

A landlord who disagrees with a LEO’s action to delay enforcement of a writ may file a “Motion to Compel Enforcement of the Writ” with the court and provide copies to the tenant. The LEO should keep the delayed writ and the court shall inform the constable of the outcome of all motions to compel. **No action is required by the court until or unless a Motion to Compel is filed.**

The Committee has determined that, while silent as to the definition of “tenant,” the Executive Order should be interpreted to apply to residential tenants, including tenants subject to the Mobile Home Parks Residential Landlord and Tenant Act and/or the Recreational Vehicle Long-Term Rental

Space Act.

The Committee encourages judges that, when entering judgment against a tenant, the court advise the tenant of the possible availability of a delay of the execution of the writ of restitution pursuant to the Executive Order and that a form can be found at www.azcourts.gov/eviction .

The Committee recognizes that Executive Order 2020-14 expires on July 23, 2020, unless extended, and may be a moving target. Any subsequent changes to it may require this Best Practice to be amended or vacated.

Motion to Compel Enforcement of the Writ

A tenant may allege that he or she has a qualifying condition under the Executive Order for events that occurred on any date in March 2020 or afterwards. A Motion to Compel should not be granted merely because the events in question occurred between March 1, 2020, and March 24, 2020.

Any Motion to Compel Enforcement of the Writ should be heard expeditiously (preferably within five business days) and may be heard telephonically; by video; or in person once any Administrative Order restricting access to our court buildings expires. The court should allow the tenant an opportunity to file a response in writing before ruling on a motion. A court is not required to set a Motion to Compel for a hearing if it is obvious from the text of the motion and from other information in the court's case file that the motion should be granted or denied but may wish to do so to address additional issues as to whether the judgment should be amended and/or to determine the date the writ may actually be enforced.

As part of the hearing on the motion process, the court shall determine whether enforcement of the writ is necessary in the interest of justice or is in accordance with ARS 33-1368(A). The burden of proof is on the tenant to establish by a preponderance of the evidence that the tenant meets one or more criteria in paragraph one of the Executive Order. The Committee notes that the Executive Order puts no onus on the tenant to show they have applied for unemployment, are actively looking for work, or have received the stimulus payment. If either party introduces information or arguments not raised in the motion or response, the court may continue the hearing in the interest of justice.

The court should instruct the tenant that rent continues to accrue while the tenant remains in possession and may provide further guidance to the parties on the length of an authorized delay of enforcement.

A delay of the execution of the writ of restitution remains in effect until the

landlord files an additional motion to compel alleging a change in circumstances. (The parties may also resolve issues concerning possession outside of the legal process.) The delay cannot be extended beyond the date the Executive Order, or any extension thereto, expires.

If a defendant has vacated the premises prior to a court order enforcing the writ, the plaintiff may file an independent civil action for any damages accrued during the delay of the enforcement.

Legal Status of the Parties

The Best Practices Committee recognizes that the Governor's Executive Order is unprecedented in Arizona law and history. Traditionally, and unquestionably, an eviction judgment terminated a lease. However, that interpretation was based upon an expectation that a writ of restitution would be executed shortly after a judgment was issued or that the parties would voluntarily enter into a new agreement. If enforcement of a writ is delayed because of the Governor's Executive Order, that is no longer the case and the tenant is remaining on the premises without a legal agreement to do so.

The Committee recognizes that the Executive Order specifically requires the tenant to "acknowledge that the terms of the lease remain in effect" in order to invoke the protections of the Executive Order. It further requires all individuals to "pay rent or comply with any other obligation that an individual may have under a tenancy."

Accordingly, the Committee believes that it is a best practice to interpret the Executive Order as a temporary exception to Arizona law to allow that a lease is not terminated and remains in effect until a writ is actually executed or the tenant vacates the premises. Under this interpretation, the terms and obligations of the lease remain in effect and there is no need of a second judgment or to consider the tenant a holdover tenant, trespasser or squatter.

Tenants who remain in possession and have paid all amounts alleged to be owed may seek to quash the writ of restitution in accordance with Rule 14(c) of the Rules of Procedure for Eviction Actions.

6. **IMPLEMENTATION:** The above best practice was recommended on March 26, 2020, and amended on April 29, 2020. The practice may be implemented immediately and remain effective until superseded or abolished.